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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RUBIN LAWRENCE DUCKETT,
12 CDCR #G-46279,

13 Plaintiff,

14 vs.

15 L. SCHEMEHORN, Correctional Officer;
16 A. CHRITONSON, Fac. 4 Sgt.;
17 W. BEAUCHEMIN, Investigating Officer;
18 JOHN DOE 1, Correctional Officer;
19 J. ELIAS, Sr. Hearing Officer;
20 G. PEDERSON, Appeals Coordinator;
21 G. WEEKS, Correctional Officer,

22 Defendants.

Civil No. 11-0113 DMS (NLS)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE WITHOUT
PREJUDICE PURSUANT TO
28 U.S.C. § 1915(a)**

[Doc. No. 2]

22 Plaintiff, an inmate currently incarcerated at Chuckawalla Valley State Prison in Blythe,
23 California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.
24 Plaintiff alleges prison officials at Richard J. Donovan Correctional Facility violated his Eighth
25 and Fourteenth Amendment rights while he was housed there in late November 2009 and early
26 2010. *See* Compl. at 4-12.

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1 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead,
 2 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a)
 3 [Doc. No. 2].

4 **I. MOTION TO PROCEED IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the United
 6 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
 7 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is
 8 granted leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See*
 9 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,
 10 1177 (9th Cir. 1999). “Under the PLRA [Prison Litigation Reform Act], all prisoners who file
 11 IFP civil actions must pay the full amount of the filing fee,” regardless of whether the action is
 12 ultimately dismissed for any reason. *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002)
 13 (citing 28 U.S.C. § 1915(b)(1) & (2)).

14 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also
 15 submit a “certified copy of the trust fund account statement (or institutional equivalent) for the
 16 prisoner for the 6-month period immediately preceding the filing of the complaint....” 28 U.S.C.
 17 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment
 18 of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
 19 average monthly balance in the account for the past six months, whichever is greater, unless the
 20 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter,
 21 the institution having custody of the prisoner must collect subsequent payments, assessed at 20%
 22 of the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and
 23 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 24 § 1915(b)(2).

25 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), he has
 26 not attached a certified copy of his prison trust account statement for the 6-month period
 27 immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL.
 28 CivLR 3.2. Section 1915(a)(2) clearly mandates that prisoners “seeking to bring a civil action

1 ...without prepayment of fees ... *shall* submit a certified copy of the trust fund account statement
 2 (or institutional equivalent) ... for the 6-month period immediately preceding the filing of the
 3 complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

4 Without Plaintiff’s trust account statement, the Court is simply unable to assess the
 5 appropriate amount of the filing fee which is statutorily required to initiate the prosecution of
 6 this action. *See* 28 U.S.C. § 1915(b)(1).

7 **II. CONCLUSION AND ORDER**

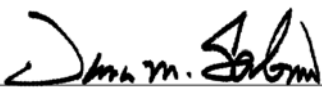
8 For the reasons set forth above, **IT IS ORDERED** that:

9 (1) Plaintiff’s Motion to Proceed IFP [Doc. No. 2] is DENIED and the action is
 10 DISMISSED without prejudice for failure to prepay the \$350 filing fee mandated by 28 U.S.C.
 11 § 1914(a).

12 (2) Plaintiff is GRANTED an additional forty five (45) days from the date this Order
 13 is Filed to either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to Proceed IFP,
 14 *which includes a certified copy of his trust account statement for the 6-month period preceding*
 15 *the filing of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a
 17 Court-approved form “Motion and Declaration in Support of Motion to Proceed IFP” in this
 18 matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files
 19 the attached Motion to Proceed IFP, *together with a certified copy of his prison trust account*
 20 *statement within 45 days*, this action shall remained closed without further Order of the Court.¹

21 DATED: January 21, 2011

22 
 23 HON. DANA M. SABRAW
 24 United States District Judge

25 ¹ Plaintiff is cautioned that if he chooses to proceed further by either paying the full civil filing
 26 fee required by 28 U.S.C. § 1914(a), or sufficiently moving to proceed IFP, his Complaint will be
 27 screened by the Court and may be dismissed sua sponte pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C.
 28 § 1915(e)(2)(b) regardless of payment or fee status. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th
 Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua
 sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v. Robinson*,
 621 F.3d 1002, 1004 (9th Cir. 2010)(discussing sua sponte screening required by 28 U.S.C. § 1915A(b)
 of all prisoner complaints).